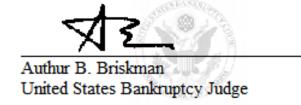
ORDERED.

Dated: August 12, 2015



UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA ORLANDO DIVISION www.flmb.uscourts.gov

In re:		
ERIC MESSBAUER,		Case No. 6:15-bk-04338-ABB Chapter 13
Debtor.	/	

ORDER DENYING ALL PENDING MOTIONS FILED BY THE DEBTOR (DOC. NOS. 39 AND 40)

This matter came before the Court on the Emergency Motion to File Paper Under Seal (Doc. No. 39) and the Motion to Reinstate Case (Doc. No. 40) (collectively, the "Motions") filed on August 5, 2015. The Motions are due to be denied.

Background

The Debtor filed a "barebones" Chapter 13 petition on May 18, 2015 (Doc. No. 1). A Notice of Deficient Filing was entered on May 19, 2015 (Doc. No. 5). The Notice of Deficient Filing informed the Debtor that certain documents must be filed, that those documents must be filed within 14 days from the Notice of Deficient filing (by June 2, 2015), and that failure to file the documents within the 14 day time period would result in the dismissal of the Debtor's case (Doc. No. 5).

The Debtor filed a motion requesting an extension of time to file the requisite documents on May 29, 2015 (Doc. No. 13, the "Motion for Extension"). The Motion for Extension was granted and the deadline to file all required documents was extended to June 15, 2015 (Doc. No. 14). The Debtor filed some documents, but failed to file all required documents and the case was dismissed on June 16, 2015 (Doc. No. 17, the "Dismissal Order"). The Schedules Filed by the Debtor are rife with omissions and incomplete explanations including listing all creditor claims in the amount of \$0.00 (Doc. No. 15).

The Trustee, on the same day as entry of the Dismissal Order, filed a Motion to Dismiss for Failure to File a Feasible Plan (Doc. No. 18) as the Debtor's proposed Chapter 13 plan provided for payments of \$0.00 and failed to list any creditors (Doc. No. 16).

The Debtor filed his Motion to Reinstate Case on June 25, 2015 acknowledging he had failed to file certain documents due to an oversight and representing he would correct the deficiencies (Doc. No. 20). An Order Conditionally Denying the Motion to Reinstate Case (Doc. No. 22) was entered on June 29, 2015 providing the Debtor had still failed to file Page 3 of Schedule J and stating:

- 1. If the debtor(s) do not file appropriate documents with the Court within 28 days of the entry of this order, Motion is denied without further notice of hearing.
- 2. If the debtor(s) do file timely documents, the Court will review the pleadings and enter appropriate order

The Debtor filed an Amended Schedule J on July 29, 2015 (Doc. No. 30). The Amended Schedule J was stricken from the record on July 30, 3015 because it did not

contain "an appropriate unsworn declaration with the Debtor's signature as required by Federal Rule of Bankruptcy Procedure 1008" (Doc. No. 30). The Debtor filed a Second Amended Schedule J on July 8, 2015 containing his signature (Doc. No. 35).

The Debtor filed an Amended Chapter 13 Plan on July 2, 2015 (Doc. No. 26, the "Amended Plan"). The Amended Plan provides for monthly payments in the amount of \$10.00 commencing in June 2015 through June 2016 with payments going to creditors "unknown at this time" (Doc. No. 26).

A hearing on the Motion to Reinstate Case was set and held on August 5, 2015 at which the Debtor and the Chapter 13 Trustee appeared. The Motion to Reinstate Case was denied in open court (Doc. No. 42). The Debtor filed the Motions immediately after the August 5, 2015 hearing requesting to file papers under seal and, again, to reinstate his case.

Discussion

Reinstatement of a case is not recognized in the Bankruptcy Code or Rules. The only effect a motion to reinstate can have in a case is to vacate the order of dismissal, otherwise there would be no case to reinstate. *In re Searcy*, 313 B.R. 439, 442 (Bankr. W.D. Ark. 2004) (citing *Diviney v. NationsBank of Texas (In re Diviney*), 211 B.R. 951, 962 (Bankr. N.D. Okla.1997)). A motion to vacate the dismissal order is properly brought under Federal Rule of Bankruptcy Procedure 9024, which incorporates Federal Rule of Civil Procedure 60.

The remedy provided by Rule 60(b) is extraordinary, and special circumstances must justify granting relief under it. *Moolenaar v. Gov't of Virgin Islands*, 822 F.2d 1342,

1346 (3d Cir.1987) (internal quotations omitted). The party seeking such extraordinary relief from a final judgment bears a heavy burden. *In re Lampman*, 494 B.R. 218, 222 (Bankr. M.D. Pa. 2013).

Fed. R. Civ. P. 60 provides five specific grounds and one catch-all provision for relief from a final judgment, order or proceeding:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

The Debtor failed to articulate any of the above grounds warranting relief from the Dismissal Order. The Debtor failed to provide any explanation regarding the deficiencies in his Schedules and proposed Chapter 13 plan or to explain his intended goals in filing the instant case. The Trustee represented the Debtor's case had been dismissed, in part, for failure to provide tax returns and the Debtor admitted to not having paid his federal income taxes since the 1990s. The Debtor has not met the heavy burden required to vacate the Dismissal Order.

The Court lacks subject matter jurisdiction to consider a motion to file papers under seal once the underlying case has been dismissed. *See generally* 28 U.S.C. §§ 157 and 1334; *See also In re Garnett*, 303 B.R. 274, 279 (E.D.N.Y. 2003) (holding a bankruptcy court could not administer assets or otherwise issue orders involving the

foreclosure of real property where the underlying case had been dismissed and the bankruptcy court had not first vacated the dismissal order.). The Debtor's underlying case is dismissed and the Dismissal Order has not been vacated. The Court may not consider the Debtor's request to file papers under seal under these circumstances.

Accordingly it is,

ORDERED, ADJUDGED and DECREED that the Emergency Motion to File

Paper Under Seal (Doc. No. 39) is hereby DENIED; and it is further

ORDERED, ADJUDGED and DECREED that the Motion to Reinstate Case

(Doc. No. 40) is hereby DENIED.

The Clerk is directed to serve a copy of this Order on all interested parties.